

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7681 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJ STATE ROAD TRANSPORT CORPN

Versus

MOTILAL VENAJI HIRAGARAT

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/04/99

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation (hereinafter referred to as 'the Corporation' for short) has filed this petition under Article 227 of the Constitution of India, challenging the award passed in Reference (LCA) No. 32 of 1986 dated 21.11.1987 by the Presiding Officer, Labour Court, Ahmedabad, directing the petitioner-corporation to reinstate the respondent workman on his original post with continuity of service.

with 75% of back-wages from the date of his dismissal till he is actually reinstated.

The respondent, while serving as a conductor with the petitioner-corporation committed a misconduct namely; that he did not issue tickets to the five passengers though he collected fare from them on 13.12.1981 while serving as a conductor in a bus on the route from Rajkot to Ambaji. It was also alleged against the respondent that when the passengers demanded tickets, he issued tickets unpunched. For the aforesaid misconduct, the respondent was served with the charge-sheet on 19.2.1982. Since the explanation given by the respondent was not found satisfactory, the inquiry was held against him. At the end of the inquiry, the Inquiry Officer recorded the finding against the respondent and, therefore, second show-cause notice was issued on 31.7.1982. The Disciplinary Authority after considering the reply, passed the order of dismissal on 22.2.1983.

At the instance of the respondent, a reference was referred for adjudication to consider the demand for reinstatement with full back-wages before the Labour Court, Ahmedabad.

In the statement of claim Exh. 6 filed by the respondent, wherein it is inter alia stated that he is in service as a conductor with the petitioner-corporation since 1980 having blotless service career. When he was on duty on the route from Rajkot to Ambaji, while issuing tickets, his punch was broken and, therefore, he started punching the tickets with ball-pen. According to the respondent a group of five passengers were given tickets unpunched for which he is not responsible. According to the respondent, he has been dismissed by way of victimisation as he was not allowed to produce his witnesses nor allowed to cross-examine the witnesses of the Corporation. The petitioner-corporation justified the order of dismissal by filing written statement Exh. 7.

Before the Labour Court, no oral evidence was led by either of the party. Not only that, the respondent however, submitted a pursis at Exh. 9 stating that the enquiry held against him is legal and proper except the findings of the Inquiry Officer.

The Presiding Officer of the Labour Court has, after considering the documentary evidence on record, recorded a finding that the respondent workman has committed a misconduct by issuing unpunched tickets to

five passengers. The Labour Court has specifically observed that it is difficult to believe the story of the respondent that he could not punch the tickets because the punch was broken and since, unpunched tickets were given with an intention to use them again though he could not do so because the passengers did not return him these unpunched tickets. After recording the aforesaid finding, the Labour Court however, was of the view that the proved misconduct is not such a grave which warranted dismissal from service. In the opinion of the Labour Court, the punishment is harsh and disproportionate to the misconduct. In view of this finding, the labour court ultimately allowed the reference to the extent of reinstating the respondent-workman on his original posts with continuity of service with 75% back-wages from the date of his dismissal till reinstatement.

Mrs Vasuvadatta Bhatt, learned advocate appearing for the petitioner-corporation submitted that in view of the specific finding recorded by the labour court that the misconduct alleged against the respondent-workman is proved, the labour court has committed an error in passing the order of reinstatement with 75% back-wages. In the submission of learned advocate for the petitioner-corporation that the respondent workman has committed a serious misconduct by issuing unpunched tickets with an intention to use them again. This fact on the part of the respondent is nothing but an act to defraud the corporation and, therefore, the order of reinstatement, in any case, with 75% back wages is totally uncalled for, and therefore, it was submitted that this Court should interfere in the impugned award.

Now in the instant case, the Presiding Officer of the Labour Court while recording the finding against the respondent has exercised powers under sec. 11A of the Industrial Disputes Act, 1947. Under the said provisions, the Labour Court or Tribunal is vested with the powers to interfere with the order of dismissal or discharge. On such terms and conditions, if an opinion is formed that the punishment of discharge or dismissal is too harsh requiring a lesser punishment in lieu of discharge or dismissal in the circumstances of the case. The Labour Court has considered the circumstances namely that even though the respondent issued unpunched tickets with an intention to use them again though he could not do it because the passengers did not return those unpunched tickets. In substance, even though there was a Mens Rea on the part of the respondent, but the offence is not committed. Secondly, there was no actual

misappropriation and the corporation has not undergone any damage. Third circumstance relied upon by the Labour Court is that the corporation has not produced any document showing the previous default or misconduct and has accepted the claim of the respondent that he was having blotless service and was a permanent employee. In my opinion, the aforesaid finding recorded by the Labour Court cannot be treated as perverse warranting interference while exercising the powers under Article 227 of the Constitution of India. In any case, the act of issuance of five unpunched tickets to the passengers without there being any allegations of misappropriation of the amount of petitioner-corporation, is not an act calling dismissal. In this view of the matter, there is no reason to interfere with the finding recorded by the Labour Court.

Mrs. Vasuvadatta Bhatt, however, submitted that in spite of the proved misconduct on the part of the respondent, the petitioner - corporation is required to pay 75% of the back-wages, and if, this award is confirmed, in that event, it will be giving premiums to dishonesty of the workman.

Under the circumstances, the learned advocate for the petitioner further submitted that this Court may interfere as far as payment of back-wages is concerned to the respondent. After having given conscious thoughts in the matter, I am of the opinion that there is some substance in the submission of learned advocate for the petitioner. Once the Labour Court has recorded a finding that the Mens Rea was present in the mind of the respondent by issuing unpunched tickets with an intention to use them again, and since he did not get an opportunity to use them again as the passengers did not return the same to the respondent-workman these unpunched tickets, the respondent cannot be permitted to go back with the corporation with 75% of the back-wages and, therefore, the direction to grant 75 % back-wages does not appear to be just and proper. In the same way, if nothing is paid towards the back-wages to the respondent, the respondent will also suffer financial loss. In view of the fact that there was no actual misappropriation and that the corporation has not suffered any financial loss at the hands of the respondent workman, the ends of justice shall be met, if the respondent workman is awarded with 50% of the back-wages instead of 75% of the back-wages as awarded by the Labour Court.

In the result, this petition is partly allowed. The award passed by the Labour Court, Ahmedabad in

Reference (LCA) No. 32 of 1998, as far as the reinstatement on the original post with continuity of service of the respondent-workman, is confirmed. However, the Award directing the petitioner-corporation to pay 75% back-wages from the date of dismissal till reinstatement is modified to the extent that instead of 75% back-wages, the petitioner-corporation shall pay 50% of the back-wages from the date of his dismissal till he is actually reinstated.

This Court at the time of admission of this petition, initially granted Rule and stay the amount of back-wages to be paid to the respondent-workman, however, the said order was modified when an application was filed being Civil Application No. 546 of 1989, by the respondent workman and directed the petitioner-corporation to deposit 25% amount before this Court and Registrar was directed to invest the same in any Nationalised Bank. In pursuance to the same, the petitioner-corporation has deposited 25% of the amount which has been invested and re-invested subsequently. The petitioner-corporation is, therefore, directed to pay 25% amount of back-wages to the petitioner from the date of the dismissal till reinstatement within a period of six weeks from the date of the receipt of the writ of this Court. However, balance amount of 25% which has been invested in pursuance to the order of this Court, shall be paid to the respondent -workman from the date of maturity with interest. Rule is made absolute with no order as to costs.

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